IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3914 of 2002
With
SPECIAL CIVIL APPLICATION NO. 4955 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PADHIYAR @ RABARI GANESH RAJABHAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 3914 of 2002
MR GM AMIN for Petitioner No. 1-3
MR A.J. DESAI, AGP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. In these Special Civil Applications under Article 226 of the Constitution of India, the petitioners pray to quash and set aside the order at Annexure-F and Annexure-D respectively, both dated 27-5-2001, and directing the respondent to make reference to the District Court for higher amount of compensation of the petitioners lands mentioned in the application for reference.

2. It is suggested that the agricultural lands belonging to the petitioners in Special Civil Application No. 3914 of 2002 situated in the sim of Village Vadod. Taluka Wadhwan, district Surendranagar came to be acquired consequent upon Notification dated 18-5-1996 under Section 4 (1) of the Land Acquisition Act (hereinafter the 'Act') published for the purpose of Limdi-Boghavo (Vadod) No.2 Irrigation Project. Thereafter, Notification under section 6 came to be gazetted on 12-12-1996. Award under Section 11 of the Act came to be declared on 24-12-1998. That the Land Acquisition Officer by the said award paid compensation of Rs.550 per Area. The petitioners were informed about the award by notice under Section 12 (2)of the Act dated 3-4-1999. The amount of compensation offered to the petitioners, according to the petitioners were meagre and therefore, petitioners had protested against the amount and made application for making reference under Section 18 of the Act to the Competent Court of Law; that the application made by the petitioners requesting to make reference to the District Court was not forwarded to the District Court and no reference was made by the respondent; that the application of the petitioners requesting to make reference under Section 18 of the Act came to be rejected on the ground that the applicants were not the only persons entitled to make request for reference and that the applicants have not produced power of attorney or succession certificate relating to the other holders of the land.

3. The petitioners in this petition have challenged the order Annexure-F contending that the Special Land Acquisition Officer was not justified in rejecting the request for Reference under Section 18 of the Act for enhancement of the compensation awarded under Section 11 of the Act, in as much as, the petitioner No.1 & 2 are the joint holders of land bearing Survey No. 67 and 68 respectively. Whereas petitioner No.3 is the one and same person i.e. Devshibhai Bhimabhai who has been paid the compensation as Devkaranbhai Bhimabhai, who has made

request for reference stating him Devshibhai Bhimabhai as well Devkaranbahi Bhimabhai.

4. Respondent has filed affidavit in reply. I para-2 thereof it has been stated that, petitioner No.1 & 2 are owners and occupiers of land hearing Survey No. 67 and 68 of village Vadod, Taluka Wadhwan, District Surendranagar and that, both the survey numbers belong to the petitioner No.1 & 2 jointly; that Land Acquisition Officer declared the award under Section 11 of the Act in favour of both the co-owners and occupiers and made payment to the petitioners No.1 & 2 for Survey No. 67 & 68. It is further stated that, though the land bearing Survey No. 67 and 68 are in the joint name of petitioner No.1 & 2, petitioner No.1 had made an application for reference of Survey No. 67 and petitioner no.2 made application for survey No. 68 for Reference under Section 18 of the Act, and their applications were rejected by the Land Acquisition Officer. It is further stated that as far as petitioner No.3 is concerned, the award was published in the name of Devkaran Bhima for Survey No. 75 and accordingly payment was made in favour of the same person, but the reference application was made by Devshi Bhima and therefore reference application was rejected by the authority. It is further stated that payment was made accordingly and original receipt also mentions name of Devshi and Devkaran both. Petitioner No.3 ought to have clarified same thing before the Land Acquisition Officer when petitioner was called before the authority.

5. It will be seen from the affidavit-in-reply itself that the receipts suggesting payment as far as petitioner No.3 is concerned mentions the name of petitioner No.3 as Devshi and Devkaran both, and all what has been stated is that the petitioner no.3 should have clarified this thing before the Land Acquisition Officer when he was called upon by the authorities concerned.

6. Annexure-B filed along with the affidavit in reply at Item No. 9 suggests the name of Rabari Devkaran Bhima and name of Devshi is also mentioned. Thus it would be seen that Sr. No. 9 Rabari Devkaran and Devshi both have been mentioned. Under the circumstances the Special Land Acquisition Officer cannot be said to be justified in rejecting application made by the petitioner No.3 for making reference under Section 18 to the District Court, since the receipt Annexure-B at Sr. No.9 itself suggests both the names, i.e. Devkaran as well as Devshi and father name Bhima. Under the circumstances the rejection of request for Reference made by the petitioner No.3

cannot be said to be justified or proper in any manner.

7. As far as petitioner No.1 & 2 are concerned, as pointed out above, petitioner No.1 & 2 both are holding the lands bearing Survey No. 67 and 68 jointly with each other and petitioner No.1 made a request for Reference in respect of Survey No. 67 whereas petitioner No.2 made request for Reference in respect of Survey No. 68. Thus for both the survey numbers each of the co-owners made request for reference to the District Court.

8. The reason assigned in Annexure-F for rejecting the request for Reference cannot be sustained for the reason that both the petitioners are co-owners of each of the survey numbers and interested persons in the lands taken under acquisition, and they have also been paid compensation in respect of the lands. In the case of A. VISWANATHA PILLAI AND OTHERS VS. SPECIAL TAHSILDAR FOR LAND ACQUISITION NO. IV AND OTHERS, AIR 1991 S.C. 1966, it has been held by the Supreme Court that, a co-owner is as much an owner of the entire property as a sole owner of the property and reference sought by one of the co-owners of the land for enhancement of the compensation under Section 18, 23 of the Land Acquisition Act would be entitled to make such a request and a reference under section 18 before the Court. It is further held that, other co-owners not expressly seeking reference would also be entitled to enhanced compensation prorata as per their shares. Thus it would be seen that any one co-owner can make request for reference under Section 18 of the Act for enhancement of the compensation awarded under Section 11 of the Act.

9. So far as Special Civil Application No. 4955 of 2002 is concerned, the petitioner No.1 who is one of the co-owners along with six other co-owners filed an application for Reference in respect of the agricultural land bearing Survey No. 714 situated in the sim of village Vadod, Taluka Wadhwan, District Surendranagar. Consequent upon Notification under Section 4 (1) of the Act dated 20-6-1996 came to be published for the purpose of Limdi-Boghavo (Vadod) No.2 Irrigation Project. Thereafter Notification under section 6 came to be gazetted on 12-12-1996. That the Land Acquisition Officer by the said award paid compensation of Rs.550-00 per Area. The petitioners were informed about the award by notice dated 3-4-1999 under section 12(2) of the Act, the amount of compensation offered according to the petitioners was meagre and therefore petitioners had protested against the amount and petitioner No.1 herein made an application for making Reference to the Competent

Court of Law; that the application made by petitioner No.1 requesting to make Reference to the District Court was not forwarded to the District Court and no Reference was made by the respondent. That the application of the petitioner requesting to make Reference under Sectin 18 of the Act came to be rejected on the ground that the petitioner No.1 alone is not the interested party and the petitioner has not produced power of attorney.

10. Respondent has filed affidavit in reply. In para-3 of the affidavit in reply it has been stated by the respondent that the dispute involved in this petition is with regard to Survey No. 714 etc. of village Vadod, Taluka Wadhwan, District Surendranagar; that the award was declared by Special Land Acquisition Officer in the name of co-owners of all the 7 petitioners. However, out of different co-owners only one person made reference application under Section 18 of the Land Acquisition Act. The payment was made to all the co-owners and endorsements of having received the payment were also obtained and therefore in absence of reference application by all the interested persons i.e. the co-owners, the reference application made by petitioner no.1 has been rejected by the Land Acquisition Officer. Copy of the order rejecting the request is at Annexure-A to the affidavit in reply.

11. The reason assigned in Annexure-D for rejecting the request for reference cannot be sustained for the reason that all the seven petitioners are co-owners of each of the survey numbers and interested persons in the lands taken under acquisition, and they have also been paid compensation in respect of the land. As stated above, in the case of A. VISWANATHA PILLAI AND OTHERS (supra), a co-owner is as much as owner of the entire property as a sole owner of the property and reference sought by one of the co-owners of the land for enhancement of the compensation under Section 18, 23 of the Land Acquisition Act would be entitled to make such a request and a reference under Sectin 18 before the Court and other co-owners not expressly seeking reference would also be entitled to enhanced compensation prorata as per their shares.

12. In view of the above, the Special Land Acquisition Officer cannot be said to be justified in rejecting the request for reference under Sectin 18 of the Act by the petitioner No.1.

13. For the reasons stated above, both the petitions are granted. The order rejecting request for making

Reference under Section 18 of the Act to the District Court (Annexure-F) in Special Civil Application No. 3914 of 2002 and in Special Civil Application No. 4955 of 2002 (Annexure-D) are quashed and set aside. The Respondent is directed to make reference under Section 18 of the Act to the Civil Court on the basis of the request made by the petitioners within one month from the date of receipt of the writ of this order, or from the date of production of certified copy of this order by the petitioners.

14. Rule made absolute in both the petitions. No costs.

Dt: 13-3-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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